

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

GREGORY BARNHART, JOE CONYARD,  
DOUGLAS FRANK, THOMAS  
HEFFLINGER, JOHN HOWE, DON LEASK,  
SAMUEL NESBITT, ANNA REUTOV, ERIC  
SKINNER, and JUHA TUOMINEN,

Plaintiffs,

v.

PROSPECT MORTGAGE, LLC,

Defendant.

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No. 3:13-cv-00669-  
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**OPINION AND  
ORDER**

COUNSEL

Steven D. Larson, Stoll Stoll Berne Lokting & Shlachter PC,  
Portland, Oregon, for the plaintiffs.

Adam W. Hansen, Nichols Kaster, LLP, San Francisco, California,  
for the plaintiffs.

Todd A. Hanchett, Stoel Rives LLP, Portland, Oregon, for the  
defendant.

Andrew M. Paley, Seyfarth Shaw LLP, Los Angeles, California, for  
the defendant.

Brandon R. McKelvey, Seyfarth Shaw LLP, Sacramento, California,  
for the defendant.

1 HUBEL, Magistrate Judge:

2 Defendant Prospect Mortgage, LLC ("Defendant") moves the  
3 Court for an order staying this action in its entirety pending  
4 resolution of Defendant's motion to transfer this case to the  
5 Judicial Panel on Multidistrict Litigation ("JPML") for  
6 coordinated and consolidated pretrial proceedings pursuant to 28  
7 U.S.C. § 1407 ("the MDL Motion"). For the reasons that follow,  
8 Defendant's motion (Docket No. 25) to stay is denied.

9  
10 **I. FACTS AND PROCEDURAL HISTORY**

11 Plaintiffs Gregory Barnhart, Joe Conyard, Douglas Frank,  
12 Thomas Hefflinger, John Howe, Don Leask, Samuel Nesbitt, Anna  
13 Reutov, Eric Skinner, and Juha Tuominen (collectively,  
14 "Plaintiffs") were opt-in plaintiffs in a collective action in  
15 the Eastern District of California ("the *Sliger* action"). The  
16 *Sliger* action was a conditionally certified collective action  
17 that was subsequently decertified via stipulation in January  
18 2013. Three months later, Plaintiffs and 233 other opt-in  
19 plaintiffs filed thirty-seven separate federal court cases in  
20 various district courts across the country within a span of  
21 seven days. The Nichols, Kaster law firm represents Plaintiffs  
22 in all thirty-seven cases and Seyfarth, Shaw represents  
23 Defendant in all thirty-seven cases.

24 Plaintiffs filed their complaint in the present action on  
25 April 19, 2013, alleging violations of the Fair Labor Standards  
26 Act ("FLSA"), 29 U.S.C. § 201 *et seq.*, and Oregon law. The gist  
27 of Plaintiffs' complaint is that Defendant improperly classified  
28 them as "exempt" from the overtime pay requirements of the FLSA

1 and state law. Plaintiffs allege they routinely worked in  
2 excess of forty hours per week and were not provided with  
3 overtime compensation. Instead, Plaintiffs were paid on a  
4 commission-only basis, which resulted in periods where  
5 Plaintiffs received less than minimum wage.

6 On June 13, 2013. Defendant was served with the complaint,  
7 amended complaint (filed on May 31, 2013), summons, and civil  
8 cover sheet, along with a request for waiver of service of  
9 summons via email. Defendant timely filed its answers to  
10 Plaintiffs' amended complaint on August 12, 2013, and demanded  
11 a jury trial.

12 On August 13, 2013, the parties held their Federal Rule of  
13 Civil Procedure ("Rule") 26(f) conference. Three days later, on  
14 August 16, 2013, Defendant filed the MDL Motion, seeking to have  
15 this matter, as well as thirty-six other similar matters filed  
16 in different district courts across the country, transferred to  
17 the Northern District of Illinois for coordinated or  
18 consolidated pretrial proceedings. Defendant anticipates that  
19 the MDL Motion will be heard on the JPML's December 5, 2013  
20 calendar in Las Vegas, Nevada and will be decided in early 2014.

21 On August 28, 2013, the parties filed their joint proposed  
22 scheduling order and discovery plan in this action. On  
23 September 6, 2013, Defendant filed its motion to stay which is  
24 now before the Court.

## 25 **II. LEGAL STANDARD**

26 "[T]he power to stay proceedings is incidental to the power  
27 inherent in every court to control the disposition of the causes  
28 on its docket with economy of time and effort for itself, for

1 counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S.  
2 248, 254 (1936). "Staying an action pending a decision in  
3 concurrent multidistrict litigation proceedings is 'within the  
4 court's discretion' and is 'appropriate when it serves the  
5 interests of judicial economy and efficiency.'" *Oregon v.*  
6 *Johnson & Johnson*, No. 11-CV-86-AC, 2011 WL 1347069, at \*2 (D.  
7 Or. Apr. 8, 2011) (quoting *Rivers v. Walt Disney Co.*, 980 F.  
8 Supp. 1358, 1360 (C.D. Cal. 1997)). "Courts should consider  
9 three factors when determining whether to stay an action: '(1)  
10 potential prejudice to the non-moving party; (2) hardship and  
11 inequity to the moving party if the action is not stayed; and  
12 (3) the judicial resources that would be saved by avoiding  
13 duplicative litigation if the cases were in fact consolidated.'" *Id.*

### 14 **III. DISCUSSION**

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16 Defendant concedes that it will need to take the depositions  
17 of all of the plaintiffs in this action. (Def.'s Mem. Supp. at  
18 9.) According to Plaintiffs, their depositions are necessary to  
19 Defendant's so-called "outside sales defense," which is unique  
20 to each individual plaintiff and which played a role in  
21 Plaintiffs' counsel's decision to stipulate to decertification  
22 in *Sliger*. However, Defendant argues that consolidation by the  
23 JPML will prevent duplicative depositions of witnesses that may  
24 have relevant information in all of the actions, such as  
25 Defendant's corporate witnesses in Rule 30(b)(6) depositions.

26 After the reviewing each parties' papers, the Court  
27 concludes that discovery will to a very significant extent  
28 proceed on an individual plaintiff basis. This discovery can

1 and should proceed without offending the three factors courts  
2 consider when determining whether to stay an action. Discovery  
3 that will have relevance in all of the post-*Sliger* actions, such  
4 as the deposition of Defendant's Rule 30(b)(6) designees, should  
5 be deferred until the JPML rules on the MDL Motion. Likewise,  
6 to the extent these parties cannot resolve any potential  
7 discovery disputes through conferral on their own, and where a  
8 discovery decision in this Court on the issue may have  
9 significant implications for the other thirty-six pending cases,  
10 deferral of such a decision until after a JPML decision may be  
11 necessary.

#### 12 IV. CONCLUSION

13 For the reasons stated, Defendant's motion (Docket No. 25)  
14 to stay is denied. Defendant's requests for judicial notice  
15 (Docket Nos. 25-4, 34) are denied as moot. After conferral as  
16 required by the rules, any proposed discovery that would  
17 interfere with Multidistrict Litigation should be presented to  
18 this Court for assistance.

19 IT IS SO ORDERED.

20 Dated this 30th day of September, 2013.

21 /s/ Dennis J. Hubel

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23 DENNIS J. HUBEL  
24 United States Magistrate Judge  
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